

**FILED**

OCT 01 2010

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

STEFANIE CRAMER,	)	CV 10-77-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
JOHN ALDEN LIFE INSURANCE	)	
COMPANY, d/b/a ASSURANT	)	
HEALTH, INGENIX, INC., and	)	
JOHN DOES 1-5,	)	
	)	
Defendants.	)	
_____	)	

This action arises from a Complaint filed in Montana Eleventh Judicial District Court, Flathead County, in June 2010, which made claims under Montana law for breach of contract, constructive fraud, violation of Montana's Unfair Trade Practices Act, and seeking declaratory relief as to the parties' rights and

obligations under insurance coverage by Defendant John Alden Life Insurance d/b/a Assurant Health (John Alden), and the legality of Defendants' conduct in asserting a right of subrogation. The case was removed to this Court on July 15, 2010. Defendants Ingenix, Inc. and John Alden then filed a Motion to Dismiss on July 23, 2010 with supporting brief.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation (dkt #15) in this case on August 25, 2010. Judge Lynch determined that the Plaintiff would be permitted to file an amended complaint to state a claim for relief under ERISA and that the claims for declaratory relief were not moot. An amended complaint was filed in this matter on August 31, 2010. The parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch's Findings and Recommendation.

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #15) are adopted in full.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (dkt #6) is GRANTED as to dismissal of the state law claims advanced in Cramer's now superceded Complaint.

Dated this 1<sup>st</sup> day of October, 2010.



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Donald W. Molloy, District Judge  
United States District Court

